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Han Kun Newsletter Working Group

Insights & Ideas

Legal Updates

Insights & Ideas

Long-awaited Foreign-Invested Partnership Regulations Issued (Author: Evan ZHANG; Hong JIANG)

On 25 November 2009, the State Council of the People's Republic of China (the "**State Council**") issued the long-awaited *Measures for the Administration of Partnerships Established within the Territory of China by Foreign Enterprises or Individuals* (Order of the State Council No.567) (the "**Measures**"), which shall go into effect as of March 1, 2010. The most significant implication of the Measures is that it provides to foreign investors a new alternative structure to invest in China, i.e. setting up a foreign-invested partnership.

Legislative background

The Measures is an affiliated administrative regulation for the *Law of the People's Republic of China on Partnerships* (revised in 2006, the "**Partnership Law**"). The official Q&A press release issued by the Legislative Affairs Office of the State Council on December 2, 2009 explaining the Measures states: "establishing partnerships by foreign enterprises within China is different from setting up the three types of foreign-funded enterprises currently available in China, and thus could not directly apply the relevant laws and regulations on the three types of foreign-funded enterprise."

Under current PRC laws and regulations on foreign investment, a foreign investor may choose one of the following four different types of enterprises for its business in China: Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, wholly foreign-owned enterprise and foreign-invested stock company. The Measures offers foreign enterprises and individuals a new investment alternative by allowing them to set up a foreign-invested partnership ("**FIP**") within China.

Formation of FIP

Under the Measures, a FIP may be established by: (1) two or more foreign enterprises or individuals; (2) both foreign enterprises or individuals and Chinese natural persons or legal persons or any other organization; or (3) having a foreign enterprise or individual becoming a partner of a existing partnership established by Chinese natural person or legal person or any other organization by contributing to or accepting property shares of the same.

Formation registration of FIP

Under the Measures, where establishing a FIP, a representative or agent commonly designated by all partners may directly file an application with the registration authority, and no prior approval from the commerce bureau is required, provided that the registration authority should timely inform the commerce bureau at the same level of the relevant registration information, if the

formation of the FIP is approved.

The Measures provides that where establishing a FIP, the investors should comply with the Partnership Law and other relevant laws and regulations, and abide by existing and effective foreign investment industry policies (mainly set forth in the Foreign Investment Industry Catalogue) of PRC. Where any pre-approval by other government authorities is required, the foreign investors should obtain such approval before filing a registration application. Furthermore, where a FIP involves in any special investment projects that are subject to special approval by competent governments, the FIP should conduct corresponding pre-approval procedures of investment projects under relevant national regulations.

Change and cancellation of FIP

Under the Measures, where any registration information changes or dissolution occurs, a FIP should file an application to the registration authority for alteration registration or cancellation registration. Meanwhile, the competent registration authority should inform the commerce bureau at the same level of the registration or cancellation.

Special provisions on FIP mainly engaging in investment business

Article 14 of the Measures provides that: "the establishment of a FIP mainly engaging in investment business shall be subject to other regulations, if any."

Before further special legislation on foreign-invested partnership fund is issued, a foreign investor may establish a FIP mainly engaging in investment business in accordance with the Measures and the Partnership Law. However, the Measure does not specify whether a foreign-invested partnership fund is subject to the Foreign Investment Industry Catalogue when reinvesting in industries falling under the prohibited or restricted sector.

The official Q&A press release explaining the Measures indicates that the government is lacking practical experience in dealing with FIPs mainly engaging in investment business, such as VC and PE. They are unclear whether there is any risk and whether it is necessary to adopt stricter measures to manage this sector. To be prudent, the Measures provide an open clause, i.e. Article 14.

Currently, the competent authorities, such as the registration authorities, the commerce bureaus and foreign exchange authorities, who take charge of specific regulatory work of FIPs, have not yet expressed their opinions on or formulated any detailed rules in respect of the Measures. We will monitor the further rules to be issued by various regulatory authorities in this regard and update you from time to time.

Legal Updates

1. The PRC Supreme People's Court Issued Draft Regulations on Disputes Concerning Foreign-invested Enterprises (Author: Nancy HUANG; Ning LI)

On November 23, 2009, the Supreme People's Court published on its official website the *Regulations of the Supreme People's Court on Some Issues in Adjudication of Disputes concerning Foreign-invested Enterprises (Draft for Comment)* (the **"Draft**") to solicit public comments. The deadline for comments to the Draft is December 8, 2009.

The Draft mainly addresses such issues as the validity of contracts affecting the establishment or amendment of foreign invested enterprises ("**FIEs**"), failure to contribute or provide cooperative conditions, disputes arising from equity transfer of a FIE, share pledge, entrusted investment, dormant investment, the applicable law governing WFOE contracts, etc. Once officially passed and coming into force, it will have significant implications to the practice of FIEs in China. Highlights of this Draft are expanded on below.

Validity of contracts affecting FIEs

According to the Draft, contracts affecting the establishment or amendment of FIEs only take effect when approved. However, the court may hold valid a supplemental agreement entered into by parties to an approved FIE contract, provided that such supplemental agreement does not constitute a material or substantial change to the approved one, even if the parties fails to submit the supplemental one to the examination and approval authorities for approval. Besides, already approved contracts that are in violation of certain articles of *the PRC Contract Law* may still be held invalid or revocable.

"Material or substantial changes" include changes in registered capital, company type, business scope, operating term, capital subscribed by shareholders, means of contribution, merger, division, equity transfer and changes of address among different jurisdictions.

Failure to contribute or provide cooperative conditions

If a party to a Sino-foreign cooperative or equity joint venture contract is to provide cooperative conditions or contribute by using lands or buildings, but fails to register such change of title with competent government authorities, this shall constitute a breach contract, and the court may order the breaching party to complete the tile registration or assume default liability such as compensation.

Disposal of unapproved share transfer agreements

According to the Draft, where a share transfer agreement of a FIE is not approved by the

examination and approval authority, the court shall order the transferor and the FIE to conduct the approval procedures jointly within a specified period. If the party who has the obligation to conduct the approval procedures refuses or delays to do so, the transferee has the right to request return of payment or compensation. If the approval procedures cannot be completed due to reasons attributable to the transferor, the transferee is entitled to terminate the contract and request return of payment or compensation.

In case that the transferee has already exercised shareholder's rights but hasn't paid any transfer price prior to the approval of the share transfer agreement, only after the transferor completes the approval procedures and an approval is obtained, will the request of the transferor for payment of the transfer price be upheld by the court. This provision seems to deviate from the principle of freedom of contract, in that even if the transferee has the obligation to pay under the share transfer agreement, the payment will not be supported by the court if the agreement is not approved.

First refusal rights

The Draft sets forth that a share transfer agreement entered into by a shareholder of a FIE with a party who are not shareholders of the FIE, might be revoked by the court upon the other shareholders' request, even if the share transfer has been approved by the examination and approval authority, if the other shareholders have not been given a chance to exercise their rights of first refusal when the transfer occurs.

Share pledge

The Draft restates the relevant provisions of *the PRC Property Law (2007)* and sets forth that a share pledge agreement among shareholders of a FIE and their creditors shall come into force upon its formation, without regard to whether it has been registered or not; whereas, the establishment of the share pledge rights is subject to registration.

Entrusted investment

According to the Draft, an entrusted agreement pursuant to which one party actually invests and enjoys the equity interests, while the other party acts as the nominal shareholder of the FIE, is valid, provided that the agreement does not evade or violate the mandatory clauses of laws and administrative regulations, and doest not impair social public interests.

If the de facto investor requests the court to confirm its shareholder identity in the FIE, or request an alternation of the shareholders of the FIE, or if he sues the FIE itself for dividends or other shareholders' rights, the court should not support his claims. However, if he requests the court to cause the nominal shareholder to perform the relevant obligations under

the entrusted agreement or to deliver to him the proceeds it has obtained from the FIE, the court shall support him. In addition, if the nominal shareholder fails to perform the entrusted agreement, causing the purpose of the de facto investor under the agreement impossible to be realized, the de facto investor may sue to terminate the agreement, request a refund of the capital invested and compensation, which shall be upheld by the court.

Dormant investment

In the event that an investor invests in other person's name, and requests the court to cause the investee FIE to file with the examination and approval authority for an alternation of its shareholders, the court shall uphold this claim, provided that the de facto investor has actually taken part in the operation and management of the FIE, or it is clearly known to the other shareholders that he is the actual investor. If the nominal shareholder who has not invested actually sues the FIE for exercising its shareholder's rights, the court should not support such claim.

Governing law

The Draft explicitly provides that any disputes arising from contract(s) regarding the establishment of a WFOE by two or more foreign investors shall be governed by Chinese law. Any provisions choosing a foreign law as the governing law shall be null and void.

The above is a brief introduction to the relevant provisions of the Draft, which is subject to further amendments and modifications by the Supreme People's Court going forward. We will monitor any updates in this regard and keep you posed of the same.

2. CSRC Adopted Amendments to Allow Partnership Enterprises to Open Securities Accounts (Author: Yanlin LIU)

On October 13, 2009, the China Securities Regulatory Commission ("**CSRC**") published on its website the *Decision to Amend Section 14 and Section 19 of the Rules on the Administration of Securities Registration and Settlement (Draft for Comment)* (the "**Draft**") to solicit public comments. The Draft enlarges the scope of entities that are entitled to open securities accounts, by allowing Chinese partnerships and other investors provided in laws, regulations and rules of the CSRC to open securities accounts.

On November 20, 2009, the CSRC issued the *Decision to Amend the Rules on the Administration of Securities Registration and Settlement* (the "**Decision**"), effective as of December 21, 2009. The Decision adopts the two amendments as set forth in the Draft without making any modifications. Prior to the issuance of the Decision, only legal persons

and natural persons may open securities accounts, creating procedural barriers for Chinese onshore private equity funds to exit through Chinese A-share market. The new amendment should ease PE funds in the form of partnership enterprises or non-legal person entities' ongoing concern over exits.

The Decision does not specify the scope of "other investors". However, according to an separate explanation published by the CSRC on its website together with the Draft, "other investors" include qualified foreign institution investors (QFIIs), foreign strategic investors, natural persons, legal persons and other organizations from foreign countries, Hong Kong, Macau and Taiwan who invest in the B-share market, and venture capital investment enterprises as provided in the *Interim Measures for the Administration of Venture Capital Investment Enterprises.*

3. Guidelines on Opening Securities Accounts by Partnership Enterprises and other Non-legal Person Entities Released (Author: Li ZHANG)

On December 1, 2009, the China Securities Depository and Clearing Corporation Limited released the *Guidelines on Opening Securities Accounts by Partnership Enterprises and Other Non-legal Person Entities* (the "**Guidelines**") to provide specific rules on the opening of securities accounts by partnership enterprises and non-legal person venture capital investment enterprises (the "**VCIE**"). The Guideline specifies that to open a securities account with the applicable clearing house, a VCIE shall submit, *inter alia*, the approval certificate issued by the Ministry of Commerce ("**MOFCOM**") or the filing documents issued by other relevant regulatory authorities (e.g. NDRC and its local counterparts). The Guidelines shall become effective on December 21, 2009.

The Guidelines conforms to the newly revised *Rules on the Administration of Securities Registration and Settlement* (see preceding article under item 2 -*CSRC Adopted Amendments to Allow Partnership Enterprises to Open Securities Accounts*). It sets forth in detail documents and materials necessary to be submitted by partnership enterprises and VCIEs when opening securities accounts, including:

- its business license issued by competent administration of industry and commerce (or other incorporation certificate of partnership issued by competent regulatory authorities) and copies of the same;
- its organization code certificate and copies of the same;
- partnership agreements or VCIE contracts and articles of association executed by the investors;

- list of all partners or investors, their effective identification documents and copies of the same;
- original and copies of effective identification documents of the handling person, certification of executive partner(s) or the person in charge, original and copies of effective identification documents of the executive partner or the person in charge, and the Power of Attorney issued by the executive partner or the person in charge to the handling person; and
- the Application Form of Registration of Securities Accounts of Partnership Enterprises and other Non-legal Person Entities;

The Guideline specifically mentions that VCIEs shall submit the Certificate of Approval for Establishment of Enterprises with Foreign Investment issued by MOFCOM or the filing documents issued by other regulatory authorities at or above the provincial level.

The Guidelines also provides that where certain conditions (e.g. corporate name, partners, operating term, etc.) of a partnership enterprise and VCIE change, these changes shall be promptly filed with the applicable clearing house where it has opened a securities account, and states that where dissolution occurs, the liquidator(s) shall submit required materials to close the related securities accounts.

4. MOFCOM Issued Measures on Notification and Review of Concentrations of Operators (Author: Li ZHANG)

The Ministry of Commerce ("**MOFCOM**") published on its website the *Measures on Notification of Concentrations of Operators* (the "**Notification Measures**") and the *Measures on Review of Concentrations of Operators* (the "**Review Measures**") on November 27, 2009. The two measures are formulated to implement the *PRC Anti-monopoly Law* ("**AML**") and the *Provisions of the State Council on Thresholds for Notification of Concentrations of Operators* (the "**Provisions**"), the issuance of which will provide more guidance on notification and review of concentrations of operators. The two measures will become legally effective as of January 1, 2010. Key points of these two measures are highlighted below.

Notification measures

Compared with its draft released in March 2009, the official version of the Notification Measures introduces two major changes: i) all provisions on the definition of "acquiring control of other operators" under the AML have been removed; ii) the draft stipulates that the establishment of new joint venture by two or more operators shall be considered as concentration under Article 20 of the AML. The official version has removed this.

The Notification Measures provides detailed rules on turnover calculation, pre-notification meetings, and the review and acceptance of notification documents, etc.

Turnover calculation

The Provisions only provides the threshold of notifications, i.e.: i) the total global turnover of all operators involved in concentrations in the preceding accounting year exceeds RMB 10,000,000,000, or the total nationwide turnover within China of all operators involved in concentrations in the preceding accounting year exceeds RMB 2,000,000,000; and ii) the nationwide turnover within China of each of at least two operators involved in concentrations in the preceding accounting year exceeds RMB 400,000,000. However, the Provisions failed to specify the definition of "turnover" and the specific calculation methods, which aroused controversy in actual notification and review process.

The Notification Measures expressly provides that "turnover" shall contain earnings of the relevant operators gained in selling products and providing service in the preceding accounting year with a deduction of relevant tax and addition. It further stipulates that the turnover of an individual operator involved in concentrations shall be the summation of turnover of the following: i) such individual operator; ii) other operators controlled directly or indirectly by such individual operator; iii) other operators controlling such individual operators directly or indirectly; iv) other operators controlled directly or indirectly by the operators in iii); v) other operators jointly controlled directly or indirectly by two or more than two operators in i) through iv).

Pre- notification meetings

Before formal notifications, the operators involved in concentrations can apply in writing for a meeting with MOFCOM to discuss relevant issues.

Notification party and documentation

The Notification Measures provide that parties to a merger or operators that gain control of, or are capable of imposing determinative effects on, other operators shall be responsible for filing a notification, where necessary. It further set forth detailed documents required for a notification, which include an application letter, analysis of proposed concentration's influence on competition in relevant market, concentration agreements and related documents, audited financial reports of the operators involved in concentrations by an accounting firm in the preceding accounting year, and other documents or materials required by MOFCOM.

Review measures

The Review Measures provides detailed rules on hearings, restrictive conditions, review process, etc.

Hearings

The Review Measures provides a hearing system so as to fully evaluate the influence of a particular concentration on other enterprises in the industry and on upstream and downstream industries. It stipulates that MOFCOM may decide to hold hearings to investigate and collect evidence, and to hear opinions from relevant parties initiatively or upon the request of relevant parties. MOFCOM may inform the operators involved in concentrations and their competitors, representatives of upstream and downstream industries and other relevant enterprises to attend a hearing, and it may also invite relevant experts, representatives of industry associations and relevant government authorities and consumers to attend the hearing where necessary.

For the purposes of protecting the trade secrets of relevant enterprises, the Review Measures provides that a separate hearing may be arranged if a participant so requests, and the content of such hearing shall be handled in accordance with related confidentiality policy.

Review process

The Review Measures divide the review process into two stages, i.e., preliminary review and further review. In preliminary review stage, MOFCOM shall make a decision on whether further review shall be conducted within the time limit provided in Article 25 of the AML. In further review stage, MOFCOM shall provide a reasonable time limit for operators involved in concentrations to submit a written defense, if it decides that the concentration concerned may have the effect of excluding or restricting competition.

Restrictive conditions

The Review Measures further provides that during the review process, operators involved in a concentration may bring forward restrictive conditions to adjust the transaction plan of the concentration to eliminate or alleviate the existing or potential effects the concentration concerned may have on excluding or restricting competition. Depending on the circumstances of a particular case, restrictive conditions may include: structural conditions such as divesting certain assets or business of the operators involved in concentrations; action conditions such as opening the infrastructure like network or platform, licensing key technology(including patent, exclusive technology or other intellectual property rights), terminating exclusive agreements by the operators involved in concentrations; comprehensive conditions which are combination of structural and action conditions.

5. MOC Issued Circular to Improve Management of Online Game Content (Author: Yeting CAI)

In order to improve and strengthen the management of the content of online games and

clarify the administrative responsibility of online games, the Ministry of Culture (**"MOC"**) issued the *Circular of the Ministry of Culture on Improving and strengthening the Management of Online Game Content* (the **"Circular"**) on November 13, 2009. The Circular requires online game operators to establish self-discipline mechanism, improve online game content supervision and strengthen social supervision over and industry self-regulation of online games.

Establishing self-discipline mechanism

The Circular points out online game operators shall innovate and improve their game models, enrich their game content and adjust their product structure. It calls for a change in the dominance of the "Daguai upgrades" game mode and more stringent restrictions on the "PK system", "Marriage system" or others systems among game players. It further states that online game operators shall adopt technical measures to strengthen guidance on the registration of minors and time limits. In addition, the Circular requires online game operators to set up a special agency responsible for the self-examination of online game content to ensure the legality of such content and emphasizes that the person-in-charge of such agency shall be trained by the MOC.

Improving MOC's supervision on online game content

The Circular points out the MOC will improve its examination technology and working process to strengthen the examination and record of the content of imported and home-made online games. Besides, the Circular requires implementing online game R&D projects to support and drive the development of elite domestic online games.

The Circular requires the provincial departments of the MOC to carry out an on-spot investigation over online game operators to ascertain whether each of them have obtained an Internet Culture Operating License and have been conducting their operations strictly in accordance with the business scope as specialized in the license. The Circular further urges the provincial departments to investigate and exam whether online game products contain any contents prohibited by the *Provisional Regulations for the Administration of Internet Culture* or other laws and regulations.

In addition, the Circular requires that all cultural administration departments at provincial level and culture market law enforcement teams shall crack down on major illegal online games and operations such as:

- vulgarly advertising and marketing their online game products by using the Internet;
- operating online games which advocate obscenity, pornography, gambling, violence, etc.;

- engaging in online game business without approval;
- providing imported online games without approval by the MOC;
- operating home-made online games without recording with competent MOC departments;
- providing minors with virtual currency and enabling users to access game products and services by taking at random or in other incidental manners on the premise of giving money or online game virtual currency directly or indirectly by the users; or
- illegally providing online game "private servers" and "hack tools/cheating programs".

The MOC departments will work with the communication management departments, administrative departments for industry and commerce and other government authorities to punish the illegal enterprises and close the website which provides illegal online games.

Strengthening social supervision and industry self-regulation

The Circular calls for perfection of social supervision on online games and asks the cultural departments at all levels to organize, on a regular basis, representatives of teachers, consumers, relevant regulatory departments and news and media to appraise specified online games and announce the outcome to the public. In addition, the Circular states that the MOC shall expedite the establishment of an online game industry association, formulate industry self-regulation convention(s) and guide online game operators to enhance their social responsibility awareness.

6. SAT Issued Circular on Identification of Beneficial Owners (Author: Qiushuang ZOU; Hua REN)

In consideration of the practical difficulties in identifying "beneficial owner" mentioned in many taxation treaties regarding prevention of double taxation, the Sate Administration of Taxation issued the *Circular on Interpretation and Identification of "Beneficial Owner" under Taxation Treaties* (the **"Circular**") on October 27, 2009.

The Circular first defines a "beneficial owner" as a person or an entity that has ownership and control rights of the income or of the property or rights from which such income derives. A "beneficial owner" usually carries out substantial business so an agent or a conduit company can not be a "beneficial owner". According to the Circular, a conduit company is a company usually established solely for the purpose of evading or reducing tax, shifting or accumulating profit but never conducting substantial business activities.

In addition to emphasizing that consideration shall also be paid to the purpose of taxation

treaties (namely, avoidance of double taxation and prevention of tax evasion) and the substance-over-form principle, the Circular also lists some unfavorable factors affecting the identification of a "beneficial owner" status, which include:

- the applicant has the obligation to pay all or most (such as 60% or more) of the income to a resident of a third country (or region) within a specified period (such as 12 months from the receipt of such income).
- except holding the property or rights arising from the income, the applicant does not have or seldom has any other business activity.
- in case that the applicant is an entity such as a company, the volume of its asset, scale and number of employees is small and obviously cannot match the amount of such income.
- the applicant has no or seldom has the right to control or dispose of the income or the property or right arising from such income and it does not or seldom assume any risks.
- the income is nontaxable or exempted from taxation, or taxed but at a very low tax rate in the other contracting country (or region).
- besides the loan agreements from which the interest is derived, the creditor has other loan or deposit agreements with a third party that are similar to these agreements in respects of amount, loan rate, signing date and so on.
- besides the use right transfer agreements of copyright, patent and technology from which the royalties are derived, the applicant has other transfer agreements with a third party regarding the assignment of use rights or ownership in copyrights, patents or technology.

The Circular further requires the taxpayer who applies for recognition of "beneficial owner" status to provide documents evidencing such status and other materials in relation to the above factors. Besides, if the applicant is a non-resident, information exchange mechanism may also be employed to confirm relevant information.

7. Tianjin Introduces Further Tax Incentives to Promote its Equity Investment Fund Industry (Author: Xiaolin TENG)

To encourage the development of the equity investment fund industry in Tianjin, on October 16, 2009, the People's Government of Tianjin approved and promulgated the *Measures on Promoting the Development of Equity Investment Fund Industry in Tianjin* (the "**Measures**") jointly stipulated by Tianjin Municipal Commission of Development and Reform Tianjin Municipal People's Government Financial Affairs Office, Tianjin Commission of Commerce,

Tianjin Finance Bureau, Tianjin Local Tax Bureau and Tianjin City Administration for Industry and Commerce. The Measures became effective as of the date of its promulgation, and apply to both domestic and foreign-invested equity investment funds (the "**Funds**") and equity investment fund management enterprises (including industry investment fund management enterprises, the "**Fund Management Enterprises**") registered in Tianjin.
The Measures set forth specific preferential policies applicable to Funds and Fund Management Enterprises registered in Tianjin, which are summarized as follows:

The Measures provide that partnership Funds and Fund Management Enterprises may qualify for pass-through tax treatment, i.e. "allocate first, then tax". According to the Measures, individual limited partners to a limited partnership Funds shall pay individual income tax under the item of "income from interest, dividends and bonuses" or "income from transfer of property" at a rate of 20%, and the investment income or equity transfer proceeds of an individual general partner to the same, who not only operates the partnership business but also make capital contributions to the funds, shall be taxed at a rate of 20%, provided that the aforesaid income/proceeds can be separated out. Partners in the form of companies or other entities shall pay enterprise income tax according to the relevant laws and regulations.

The Measures further set forth that during the period from January 1, 2006 to December 31, 2012, Funds and Fund Management Enterprises registered and recorded in Tianjin may enjoy the following six incentives:

- From the year when a Fund Management Enterprises first pays its business tax, the financial department in the district where the Fund Management Enterprise pay the tax, will reimburse the Fund Management Enterprise the total amount of the local portion of the business tax paid for the first two years, and a half amount for the subsequent three years;
- From the year when the Fund Management Enterprise first makes profits，the financial department in the district where the Fund Management Enterprise pay the tax, will reimburse the Fund Management Enterprise the total amount of the local portion of the enterprise income tax paid for the first two years, and a half amount for the subsequent three years;
- The plants newly built or purchased by the Fund Management Enterprise for self use are exempted from deed tax, and house property tax for three years;
- Fund Management Enterprises which build or purchase plants for self use in Tianjin, will be given a lump sum subsidy of 1000 RMB per square meter, and the maximum amount of the subsidy is 5 million RMB; Fund Management Enterprises which rent workplace for

self use, will be given a subsidy of 30% of the rent per year for 3 years. In case the rent is above the average market price, the subsidy shall be calculated based on the average market price and the total amount shall not be more than 1 million RMB;

- A senior officer who is continuingly employed by a Fund Management Enterprise in Tianjin for more than 2 years (including 2 years) will be granted an award by the local financial department when purchasing his first commercial house, vehicle or receiving trainings in Tianjin. The maximum accumulated awards will be the actual price he pays for the same, and the term of the awards shall not exceed 5 years;
- When investing in projects located in Tianjin, the Funds will be awarded by the financial department an amount of 60% of the local portion of the income tax the Funds pay for exit gains or other proceeds.

The financial department mentioned in the Measures refers to the local financial department where the Funds or the Fund Management Enterprises are registered. The Measures further provide that, during the course of implementing the Measures, if multiple preferential policies are applicable, the Funds and the Fund Management Enterprises shall not enjoy repeated preferential policies, but may choose a more favorable one.

Finally, the Measures define a project recommendation mechanism through which large-scale and high-profile projects will be firstly recommended to Funds and Fund Management Enterprises registered and recorded in Tianjin. The investee companies in Tianjin will then have priority to be listed in the Tianjin government's waiting list of going public companies, and will be supported by Tianjin government when listing domestically or overseas and be given relevant preferential polices applicable in Tianjin.

8. SAIC Issued Administrative Regulations on Trademark Agency (Author: Hua REN)

To maintain the order of trademark agency and protect the lawful rights and interests of trademark agency organizations and their clients, the State Administration for Industry and Commerce promulgated *the Administrative Measures on Trademark Agency* (the "**Measures**") on November 11, 2009, effective as of the date of its promulgation. Key aspects of the Measures are addressed below.

Qualifications for trademark agents and establishment of trademark agency organizations

According to the Measures, trademark agents are referred to as professionals practicing in a trademark agency organization. To qualify as a trademark agent, he/she shall meet the

following conditions: i) having full civil capacity; ii) familiar with trademark law and other relevant laws and regulations and having trademark agency expertise; and iii) practicing in a trademark agency organization.

The Measures further provides that to establish a trademark agency organization, an applicant shall file for registration with local administration for industry and commerce for a business license.

Agency matters

The Measures provides that a trademark agency organization may designate a trademark agent to transact the following matters: i) to apply for registration, change, renewal, transfer, oppositions, withdrawal, review and adjudication and tort complaint of trademarks on behalf of the client(s); ii) to provide consultation regarding trademark laws and act as trademark counsel; and iii) other relevant trademark matters.

Obligations of trademark agency organizations and trademark agents

Pursuant to the Measures, a trademark agency organization may not: i) entrust any other entities or individuals to engage in trademark agency matters or assist in such activities; and ii) represent both parties to a same trademark case.

A trademark agent shall: i) not practice in two or more trademark agency organizations simultaneously; ii) keep confidential of the client's trade secret and shall not disclose unpublished agency matters to any other entities or individuals without the consent of the client; or iii) reject to accept the agency request when he or she is fully aware that the client is in bad faith, has deceptive intention, or the act is in violation of national laws.

The Measures further set forth that where a trademark agent or trademark agency organization conducts any illegal acts, punishments such as warnings and fines will be imposed on it. If unsatisfied with the punishments, it may apply for an administrative review or appeal to the court directly.

Important Announcement

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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